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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 817

P. J. CARLIN CONSTRUCTION CO. AND THE TRAVELERS INSURANCE COMPANY,

Appellants,

vs.

EDWARD HEANEY AND STATE INDUSTRIAL BOARD OF THE STATE OF NEW YORK,

Appellees.

APPELLANTS' STATEMENT AS TO JURISDICTION.

A.

The Statutory Provisions Believed to Sustain the Jurisdiction.

Judicial Code, section 237 (a); U. S. C., title 28, sections 344 and 861 a.

In this cause is drawn in question the validity of a statute of the State of New York which has been held by the court below valid and applicable in a maritime matter.

The appellants' contention herein has been and is that said statute of New York, so applied, is repugnant to the Constitution and Laws of the United States.

B.

The Statute of the State, the Validity of Which is Involved—New York Workmen's Compensation Law.

Chapter 67 of the Consolidated Laws of the State of New York was enacted as chapter 816 of the Laws of 1913 (volume 4, page 2277, *et seq.*) and was re-enacted by chapter 41 of the Laws of 1914 (volume 1, page 216, *et seq.*). Subsequently, after various amendments, the statute, together with all amendments was embodied in chapter 615 of the Laws of 1922 (page 1623, *et seq.*). (The volumes and pages of subsequent amendments, which consist of matters of detail, are enumerated at the end of this statement.)

Since this Court is believed to be familiar with the general plan and scope of this statute and with its essential features, a summary statement of its pertinent provisions is deferred to the latter part of this statement.

In this case and on this appeal, the appellants have questioned and are questioning the validity of the statute above referred to on the ground that it is repugnant to Article III, Section 2, of the Constitution of the United States and to Section 24, Clause 3 and to Section 256 of the Judicial Code; U. S. C., Title 28, Sections 41 and 371.

C.

Date of Judgment Sought to be Reviewed and Date of Presentation of Application for Appeal.

The date of the judgment of the Court of Appeals of the State of New York, sought to be reviewed, is November 19, 1935.

The date upon which the application for appeal is presented is February 14, 1936.

D.

Nature of the Case.

Upon a claim presented to it by the appellee Heaney, the appellee State Industrial Board of the State of New York made an award of compensation under the said Workmen's Compensation Law of the State of New York to said Heaney for accidental personal injuries suffered by him which the said Industrial Board found arose out of and occurred in the course of said Heaney's employment. The award was made against the appellant P. J. Carlin Construction Company and the appellant Travelers Insurance Company, its compensation insurance carrier.

The appellee Heaney suffered bodily injury from the destruction and sinking of the steamboat "Observation," a major disaster which occurred in the East River, New York Harbor, on September 9, 1932. He was at the time a passenger on the vessel, having taken passage from East 136th Street, Manhattan, to Rikers Island, lying in New York Harbor. He paid a fare of ten cents for the round trip.

At the time of the occurrence, the boat had left the dock at 136th Street on a voyage to Rikers Island, which was distant from one to two miles from the point of departure. The accident occurred in the East River, in navigable waters of the United States.

The cause of the disaster is not disclosed in the record, other than the fact that there was a violent explosion in or near the vessel. Many persons on board lost their lives and many others were injured, including the appellee Heaney.

Mr. Heaney lived in the Bronx, New York City. He was a bricklayer, who had worked for the appellant P. J. Carlin Construction Company on construction work on

Rikers Island. When injured, he was journeying from his home to Rikers Island to do work there for the appellant Carlin Company. His wages were calculated upon an hourly basis. The time for which he was paid began after he reached the island and ended before he left it.

The appellant Carlin Company was one of a number of contractors engaged in the work of constructing buildings on Rikers Island for the City of New York. On the vessel at the time of the catastrophe were a large number of workmen who were on their way to Rikers Island, there to do work for the various contractors.

The steamboat "Observation" was being operated in a ferry service which was maintained primarily for the purpose of affording workmen wishing to go to Rikers Island to engage in this construction work a means by which they could secure passage to the island. It was a "large" steamboat, capable of carrying 250 passengers.

Rikers Island, the property of the City of New York, was used by it exclusively as a place of confinement of criminal prisoners. While the city maintained a ferry service from Manhattan to the island for its own purposes, it did not undertake in its contracts with the various contractors to provide "regular ferry service" for the transportation from main land to island of men and materials for the construction work there to be done; but there was inserted in each of the various contracts which it had made a provision whereby it was pointed out that the subject of such transportation was the concern of the other contracting party.

For a time the workmen used the municipal ferry in going to Rikers Island. When, after a time, the city declined to permit the further regular use of its ferry for this purpose, the appellant Carlin Company made an arrangement with one George I. Forsyth, whereby it gave its license or

consent that Forsyth operate a ferry service to Rikers Island upon schedules to be indicated by it, and whereby it assured him that the receipts by him of fares from his passengers of ten cents a round trip would equal $60.00 a day, and promised to pay him any deficit or difference between said amount and the daily fares received by Forsyth from the passengers. Forsyth manned and operated the vessel and paid the crew. He received the fares that the men paid for their transportation. At stated intervals Forsyth collected from the appellant Carlin Company the amount of the difference between the fares he had received and the sum above indicated.

The vessel was operated by Forsyth in this ferry service five days a week—Monday to Friday inclusive—during certain hours of the day. On other days, and upon occasions at night, the vessel was operated by Forsyth in special excursions, with which the appellant Carlin Company had no concern.

The steamboat "Observation" was not owned, operated or controlled by the appellant Carlin Company.

E.

Ruling Below.

The judgment of the Court of Appeals hereinabove referred to and here sought to be reviewed affirmed an award of the appellee, State Industrial Board of the State of New York and affirmed a judgment of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, wherein and whereby said award had been affirmed by said Appellate Division. Said award and said judgment granted unto the appellee Edward Heaney a recovery of money against the appellants as statutory compensation on account of the bodily injuries and dam-

ages suffered by said appellee Heaney as hereinbefore set forth.

The said judgment finally adjudges the liability of the appellants to pay to the appellee Heaney the sum directed in and by the said award to be paid to him.

On the hearings had herein before the appellee State Industrial Board of the State of New York of the claim filed by appellee Heaney for statutory compensation, the appellants objected to the jurisdiction on the ground that the subject matter of the claim, an accident and injury occurring on navigable waters of the United States, is a maritime matter within the exclusive admiralty jurisdiction of the United States.

The said appellee Industrial Board made a finding that it had jurisdiction and granted an award of compensation to the appellee Heaney against the appellants.

Upon appeal by these appellants from said award to the Appellate Division of the Supreme Court of New York, Third Judicial Department, as provided by law, judgment was rendered against the appellants, affirming said award.

Thereafter, upon appeal to the Court of Appeals of the State of New York from said judgment, pursuant to permission duly granted to the appellants by the said Court of Appeals, the latter court affirmed the said judgment.

In both said courts, the appellants contended upon said appeals that the subject matter of the case is maritime and is within the exclusive admiralty jurisdiction of the United States, by virtue of Article III, Section 2 of the Constitution of the United States and of Section 24, clause 3 and of Section 256 of the United States Judicial Code; U. S. C., title 28, Sections 41 and 371.

In the said decision and judgment of the Court of Appeals, here sought to be reviewed, that court certifies:

> "A question under the Federal Constitution was presented and necessarily passed upon by this court. It

relates to the exclusive jurisdiction of the Federal courts over admiralty cases. The claimant was injured by the explosion of a passenger steamer on the East River, New York. This court held that the Workmen's Compensation Law of the State applied, and that the Federal courts had not exclusive jurisdiction to afford relief."

F.

Cases Believed to Sustain the Jurisdiction.

The appellants believe that the following cases sustain the jurisdiction of this Court in this matter:

Sultan Railway & Timber Co. v. *Department of Labor, etc.*, 277 U. S. 135;
King Mfg. Co. v. *City Council of Augusta*, 277 U. S. 100;
Southern Pacific Co. v. *Jensen*, 244 U. S. 205;
Knickerbocker Ice Co. v. *Stewart*, 253 U. S. 149;
Spencer Kellogg & Sons, Inc. v. *Hicks*, 285 U. S. 502;
The Moses Taylor v. *Hammons*, 71 U. S. (4 Wall.) 411;
Baizley Iron Works v. *Span*, 281 U. S. 222;
T. Smith & Son v. *Taylor*, 276 U. S. 179.

G.

The Workmen's Compensation Law of the State of New York as it existed at the time of the accident involved in this case, and of the hearings held and award made herein, established nineteen groups of hazardous employments; defined "employee" as a person engaged in one of these employments upon the premises, or at the plant, or in the course of his employment away from the plant of his employer, or one who is in the service of an employer whose principal business is that of carrying on or conducting one of those hazardous employments, but excluding farm laborers and domestic servants; defined "employment" as including employment

only in a trade, business or occupation carried on by the employer for pecuniary gain, with exceptions not applicable to this case; defined "injury" and "personal injury" as meaning only accidental injuries arising out of and in the course of employment and such disease or infection as naturally and unavoidably may result therefrom; and required every employer subject to its provisions to pay or provide compensation according to a prescribed schedule for the disability or death of his employee resulting from an accidental personal injury arising out of and in the course of the employment, without regard to fault as a cause, except where the injury is occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or of another, or where it results solely from the intoxication of the injured employee while on duty, in which case neither the injured employee nor any dependent shall receive compensation.

By Section 11 the prescribed liability is made exclusive and in place of any other liability whatsoever, except that, if an employer fails to secure the payment of compensation as provided in Section 50, an injured employee, or his legal representative, in case death results from the injury, may, at his option, elect to claim compensation under the act, or to maintain an action in the courts for damages; and it is provided that in such an action it shall not be necessary to plead or prove freedom from contributory negligence, and that the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to contributory negligence.

Compensation under the said statute is not regulated by the measure of damages applied in suits at law for damages; but, in addition to providing medical, surgical, or other like treatment, it is based on loss of earning power, being graduated according to the average weekly wages of

the injured employee and the character and duration of the disability, whether partial or total, temporary or permanent; while in case the injury causes death, the compensation is known as a death benefit, and includes funeral expenses, not exceeding $200.00, payments to surviving wife (or dependent husband) during widowhood (or dependent widowerhood) of a percentage of the average wages of the deceased, and if there be a surviving child or children under the age of eighteen years an additional percentage of such wages for each child until that age is reached.

The statute contains provisions invalidating agreements by employees to waive the right to compensation, prohibiting any assignment, release or commutation of claims for compensation or benefit except as provided by the act, exempting them from the claims of creditors, and requiring that the compensation and benefit shall be paid only to employees or their dependents.

Provision is made for the establishment of a State Industrial Board with administrative and judicial functions, including authority to pass upon claims to compensation on notice to the parties interested.

The award or decision of the Industrial Board is made subject to an appeal, on questions of law only, to the Appellate Division of the Supreme Court for the Third Department, with an ultimate appeal to the Court of Appeals in cases where such an appeal would lie in civil action.

A fund is created, known as "The State Insurance Fund," for the purpose of insuring employers against liability under the law, and assuring to the persons entitled thereto the compensation thereby provided. The fund is made up primarily of premiums received from employers, at rates fixed by the designated state authority, in view of the hazards of the different classes of employment; and the premiums are to be based upon the total payroll and num-

ber of employees in each class at the lowest rate consistent with the maintenance of a solvent state insurance fund and the creation of a reasonable surplus and reserve. Elaborate provisions are laid down for the administration of this fund.

By Section 50 each employer is required to insure compensation to his employees in one of the following ways:

> (1) By insuring and keeping insured the payment of such compensation in the State Fund; or
>
> (2) Through any stock corporation or mutual association authorized to transact the business of Workmen's Compensation Insurance in the State; or
>
> (3) By furnishing satisfactory proof to the commissioner of his financial ability to pay such compensation for himself, in which case the commissioner shall require the deposit with the commissioner of such securities as the commissioner may deem necessary of the kind prescribed in certain designated provisions of the Banking Law, to secure his liability to pay the compensation provided in the compensation law.

If an employer fails to comply with this section he is guilty of a misdemeanor and is made subject to a fine or imprisonment, or both; besides which, his injured employees or their dependents are at liberty to maintain an action for damages in the courts, as prescribed by Section 11.

Section 29 provides that if an employee entitled to compensation be injured or killed by the negligence or wrong of another not in the same employ, he or his dependents shall elect whether to take compensation under the Workmen's Compensation Law or to pursue his remedy against such other; and that if he elects to take compensation, the awarding of compensation shall operate as an assignment of the cause of action against such other to the person or

insurance carrier liable for the payment of such compensation; and that if he shall elect to proceed against such other, the person liable for the payment of compensation shall contribute only the deficiency between the amount collected from such other and the compensation provided by this statute.

Subdivisions 8 and 9 of section 15 require the payment of $1,000.00 into a special fund in every case where an employee is killed by accident that would have entitled his dependents to compensation, but in which there are no living dependents entitled to such compensation, the funds thus set apart to be applied (1) to increase the compensation otherwise payable to one who loses a second member after he had already been deprived of a member, and (2) to facilitate the rehabilitation of injured employees. Section 29 provides that the payment of such an award shall operate to give to the employer or insurance carrier liable for the award a cause of action for the amount of such payment, together with the reasonable funeral expenses and the expense of medical treatment, which shall be in addition to any cause of action by the legal representatives of the deceased, in any case where the employee was killed by the negligence or wrong of another not in the same employ.

H.

Where the Statute May be Found in the Official Edition.

The Workmen's Compensation Law of the State of New York was originally enacted as Chapter 816 of the Laws of 1913, and was re-enacted by Chapter 41 of the Laws of 1914. Thereafter, by Chapter 615 of the Laws of 1922, all prior amendments to the statute thus originally enacted and re-enacted were embodied in the Workmen's Compensation Law and it was in many respects rewritten. Subsequent to

Chapter 615 of the Laws of 1922, and prior to the accident upon which the claim herein is based, the said statute was amended by many statutes to which we refer below.

Chapter 816 of the Laws of 1913 is printed on pages 2277 to 2312 of the Official Edition of the statutes of New York, known as Laws of New York, Extraordinary Session, 1913. Chapter 41 of the Laws of 1914 appears on pages 216 to 251 of the Official Edition of the Laws of New York, 1914, Vol. 1, and Chapter 615 of the Laws of 1922 appears on pages 1623 to 1662, inclusive, of the Official Edition of the Laws of New York for 1922.

The amendments subsequent to 1922 and prior to September 9, 1932, the date when the appellee Heaney was injured, were made by various statutes bearing the chapter numbers appearing in the first column below, were enacted in the year appearing in the second column below and are published on the pages appearing in the third column below, of the Official Edition of the Laws of New York for the year indicated in the second column.

Chapter.	Year.	Pages.
46, 334, 566, 567, 568, 571, 572	1923	46-47, 573-574, 861-862, 863, 870, 871
317, 318, 319, 320, 499, 500, 658	1924	586, 587, 588, 917-918, 919, 1210
656, 657, 658, 660	1925	1078, 1079-1081, 1082, 1100
256, 257, 258, 260, 261, 262, 532, 533, 748	1926	460, 461, 462, 463-465, 466, 467-468, 911, 912, 1393-1394
493, 494, 496, 497, 553, 554, 555, 556, 557, 558	1927	1195, 1196-1198, 1199, 1199-1202, 1333-1334, 1335-1336, 1336, 1337
584, 749, 750, 752, 753, 754, 755	1928	1310-1311, 1613, 1614-1615, 1618, 1619, 1620-1627, 1627
64, 298, 299, 300, 301,	1929	117, 750-752, 753, 754,

Chapter.	Year.	Pages.
302, 303, 304, 305, 564, 702		755, 756, 757, 758, 759, 1148-1149, 1652
60, 183, 184, 316, 521, 609, 698	1930	86-89, 532-533, 534, 705-709, 1000-1002, 1117, 1273-1274
199, 291, 292, 343, 385, 508, 510	1931	550-551, 704, 705, 772-776, 829-831, 1260, 1262-1264
200, 201, 202, 203, 248, 488	1932	564, 565, 566-568, 568, 632, 1062-1063

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